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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,734	03/29/2004	Keith F. Woodruff	500-020-1-1-1-1-1	1688

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11/22/2005

Mark P. Stone
4th Floor
25 Third Street
Stamford, CT 06905

EXAMINER

JACYNA, J CASIMER

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/811,734

Applicant(s)

WOODRUFF, KEITH F.

Examiner

J. Casimer Jacyna

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 15 and 41-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 9, 12, 15, 41, 43 and 48 is/are rejected.
- 7) ☒ Claim(s) 4-8, 10, 11, 42, 44-47, 49 and 50 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1 and 15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 11 of U.S. Patent No. 5,947,171 in view of McCunn et al. (5,060,701). With the exception of the subject matter added in the amendment of 10/3/2005, Application claim 1 is included on lines 1-11 of patent claim 11 and Application claim 15 is included on lines 1-25 of patent claim 1. Therefore, Patent '171 claims a valve assembly substantially as claimed but does not claim a closed system with a resiliently biased valve assembly. However, McCunn teaches another granular container with a valve assembly for transferring granular material having a closed system with a resiliently biased valve assembly for the purpose of ensuring against the spillage and contamination of material by immediately closing the valve and maintaining the system closed. Therefore, it would have been

obvious to one of ordinary skill in the art at the time the invention was made to provide the claims of Patent '171 with a closed system and a resiliently biased valve as, for example, taught by McCunn in order to ensure against the spillage and contamination of material by immediately closing the valve and maintaining the system closed.

3. Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,085,809 in view of McCunn et al. (5,060,701). With the exception of the subject matter added in the amendment of 10/3/2005, Application claim 1 is included on lines 1-14 of patent claim 1. Therefore, Patent '809 claims a valve assembly substantially as claimed but does not claim a resiliently biased valve assembly. However, McCunn teaches another granular container with a valve assembly for transferring granular material having a resiliently biased valve assembly for the purpose of ensuring against the spillage and contamination of material by immediately closing the valve. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the claims of Patent '809 with a resiliently biased valve as, for example, taught by McCunn in order to ensure against the spillage and contamination of material by immediately closing the valve.

4. Claims 1 and 15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 11 and 18 of U.S. Patent No. 6,305,444 in view of McCunn et al. (5,060,701). With the exception of the subject matter added in the amendment of 10/3/2005, Application claim 1 is included on lines 1-11 of patent claim 1 and Application claim 15 is included within

patent claim 11. Patent claim 11 additionally recites that the product receptacle collar is separate. Application claim 15 is included on lines 1-25 of patent claim 18. Therefore, Patent '444 claims a valve assembly substantially as claimed but does not claim a closed system with a resiliently biased valve assembly. However, McCunn teaches another granular container with a valve assembly for transferring granular material having a closed system with a resiliently biased valve assembly for the purpose of ensuring against the spillage and contamination of material by immediately closing the valve and maintaining the system closed. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the claims of Patent '444 with a closed system and a resiliently biased valve as, for example, taught by McCunn in order to ensure against the spillage and contamination of material by immediately closing the valve and maintaining the system closed.

5. Claims 1, 12, 15 and 48 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, 6, 9 and 25 of U.S. Patent No. 6,543,496 in view of McCunn et al. (5,060,701), Reed et al. (5,119,972) and Ata et al. (4,746,034). With the exception of the subject matter added in the amendment of 10/3/2005, Application claim 1 is included on lines 1-11 of patent claim 1. Application claim 15 is included on lines 1-27 of patent claim 6. The method steps of Application claim 48 are included on lines 9-15 of patent claim 9 with the apparatus in the preamble being defined in patent claim 7. Application claim 48 is included on lines 1-16 of patent claim 25. Application claim 12 is included on lines 1-7 of patent claim 4.

In regard to claims 1, 15 and 48, Patent '496 claims a valve assembly substantially as claimed but does not claim a closed system with a resiliently biased valve assembly. However, McCunn teaches another granular container with a valve assembly for transferring granular material having a closed system with a resiliently biased valve assembly for the purpose of ensuring against the spillage and contamination of material by immediately closing the valve and maintaining the system closed. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the claims of Patent '496 with a closed system and a resiliently biased valve as, for example, taught by McCunn in order to ensure against the spillage and contamination of material by immediately closing the valve and maintaining the system closed.

In regard to claim 12, Patent '496 claims a valved storage container substantially as claimed but does not claim a handled housing with an upward tab. However, Reed and Ata teach other valved storage containers having a handle at 6 of Reed for the purpose of providing a grip while maneuvering the container and upper tabs at 24 of Ata for the purpose of allowing the container to be moved with a lifting machine. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the claims of Patent '496 with a handled housing and an upward tab as, for example, taught by Reed and Ata in order to provide a grip while maneuvering the container and allow the container to be moved with a lifting machine.

6. Claims 1 and 12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 14 of U.S.

Patent No. 6,732,772 in view of McCunn et al. (5,060,701), Reed et al. (5,119,972) and Ata et al. (4,746,034). With the exception of the subject matter added in the amendment of 10/3/2005, Application claim 1 is included on lines 1-12 of patent claims 1 and 14 and Application claim 12 is included on lines 13-20 of patent claims 1 and 14.

In regard to claim 1, Patent '772 claims a valve assembly substantially as claimed but does not claim a closed system with a resiliently biased valve assembly. However, McCunn teaches another granular container with a valve assembly for transferring granular material having a closed system with a resiliently biased valve assembly for the purpose of ensuring against the spillage and contamination of material by immediately closing the valve and maintaining the system closed. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the claims of Patent '772 with a closed system and a resiliently biased valve as, for example, taught by McCunn in order to ensure against the spillage and contamination of material by immediately closing the valve and maintaining the system closed.

In regard to claim 12, Patent '772 claims a valved storage container substantially as claimed but does not claim a handled housing with an upward tab. However, Reed and Ata teach other valved storage containers having a handle at 6 of Reed for the purpose of providing a grip while maneuvering the container and upper tabs at 24 of Ata for the purpose of allowing the container to be moved with a lifting machine. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the claims of Patent '772 with a handled housing and an upward

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tab as, for example, taught by Reed and Ata in order to provide a grip while maneuvering the container and allow the container to be moved with a lifting machine.

7. The terminal disclaimer does not comply with 37 CFR 1.321(b) and/or (c) because:

An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a). See 37 CFR 1.321(b) and/or (c).

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-3, 9, 15, 41, 43 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by McCunn et al. (5,060,701). McCunn discloses a valve assembly including a container 28, a first valve component 30, a second valve component 24, a means for rotating 58, means resiliently biasing 42 with 66, a means for guiding 38, retaining means 54, a means for mounting 59 with 61 wherein a closed flow path is provided as disclosed on the first line of the Abstract. Additionally, McCunn discloses a product receptacle 18, and a collar 52, a flange 60 and a hub 70.

11. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reed et al. (5,119,972) in view of Ata et al. (4,746,034). Reed discloses a container including a hollow housing having a top wall 16, a side wall 18, a bottom wall 22, a handle 6 defined in the side wall as shown in figure 3, a discharge nozzle 4, and a means for removably mounting a valve assembly as are the threads on 4 as shown in the figures substantially as claimed but does not disclose an upwardly extending tab on the top surface.

However, Ata teaches another bulk container for transporting chemicals to various locations having an upwardly extending apertured tab 24 for the purpose of loading and unloading the container from a vehicle with a crane. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Reed with an apertured upward tab as, for example, taught by Ata in order to loading and unloading the container from a vehicle with a crane.

12. Claims 4-8, 10, 11, 42, 44-47, 49 and 50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Wed. thru Fri. 9AM-7PM, Mon. 7AM-1PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 703-272-4835. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300 for regular communications and (571) 273-8300 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1000.

A handwritten signature in black ink, appearing to read 'J. Casimer Jacyna', with a long, sweeping horizontal line extending to the right.

J. Casimer Jacyna
Primary Examiner
Art Unit 3751

JCJ